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No. 149

In the Supreme Court of the United States

OCTOBER TERM, 1960

JOHN C. WEBB AND HELEN H. WEBB, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
PERRY W. MORTON,
Assistant Attorney General,
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OPINIONS BELOW

The opinion of the district court (Pet. 20–29) is reported at 23 F.R.D. 635. The *per curiam* opinion of the court of appeals (Pet. 18–19) is reported at 273 F. 2d 416.[1]

JURISDICTION

The judgment of the court of appeals was entered on January 18, 1960. On April 11, 1960, Chief Justice Warren extended the time for filing the petition for a writ of certiorari to and including May

[1] An earlier opinion of the district court is reported at 157 F. Supp. 401, and the court of appeals' opinion affirming this judgment appears at 256 F. 2d 669. This Court denied certiorari, 358 U.S. 931.

17, 1960, and on May 17, 1960, to and including June 16, 1960. The petition was filed on June 15, 1960. The jurisdiction of the Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the trial court abused its discretion in denying a motion for relief from judgment under Rule 60(b), F.R. Civil P., when (1) the "newly discovered evidence" alleged as one ground had been a matter of public record six months before trial, (2) alleged misconduct of the Assistant United States Attorney asserted to be "fraud" was known to the movants at the time that they had moved for a new trial on similar grounds of misconduct and had been given a hearing on those issues, and (3) no other reason justifying relief was advanced.

STATEMENT

On December 5, 1955, the United States condemned a portion of petitioners' land for use as a Nike site. A valuation trial was held in October 1957 and petitioners were awarded $14,000 for the land taken. The trial court denied a motion for a new trial (157 F. Supp. 401), the court of appeals affirmed the judgment (256 F. 2d 669), and this Court denied certiorari (358 U.S. 931).

On October 10, 1958, two weeks before the expiration of one year from the date of the district court's judgment, petitioners moved for relief from judgment under Rule 60(b)(2), F.R. Civil P., alleging newly discovered evidence. On April 7, 1959, they moved to amend their motion by adding references to

subsections (3) and (6) of Rule 60(b), which cover "fraud" and "any other reason justifying relief." The "newly discovered evidence" was the fact that the sale of a neighboring farm (used at the trial as a sale of comparable property) had actually been for some $185 an acre more than one of petitioners' witnesses had testified. An affidavit accompanying the motion revealed that petitioners had thought at the time of the trial that the sale price had been higher than their witness had testified and that a deed indicating the true price had been recorded on April 1, 1957, some six months before trial. The affidavit supporting the amendment to the motion alleged misrepresentation on the part of the Assistant United States Attorney in referring to "a gravel county road" when he allegedly knew that there were plans to improve it. The affidavit also referred to the disappearance of a project map from petitioners' papers and suggested that the failure to divulge the information shown by the map amounted to the suppression of evidence.

After a hearing, the trial court denied petitioners' motion for the following reasons: (1) the motion had not been filed within "a reasonable time" as required by Rule 60(b); (2) the "newly discovered evidence," being a matter of public record, could have been discovered by due diligence before trial and was in fact known to petitioners before trial; (3) the difference in sale price shown by the "newly discovered evidence" would probably not have produced a more favorable valuation for the property owners if it had been advanced at the trial because the jury ap-

parently did not accept the neighboring farm's sale as a comparable sale; (4) the new grounds contained in the amended motion were not presented to the court within the year allowed by Rule 60(b); (5) the matters alleged to constitute fraud by the Assistant United States Attorney in the trial of the case amount to nothing more than a further specification of allegations of misconduct earlier made by petitioners which were presented and ruled on in the motion for new trial and in the first appeal; and (6) there is nothing in this case so unusual or extraordinary as to bring it within the provisions of Rule 60(b)(6), which allows relief from judgment for "any other reason justifying relief" within a reasonable time. The court of appeals affirmed without opinion.

ARGUMENT

While Rule 60(b) of the Federal Rules of Civil Procedure is remedial and therefore should be given a liberal construction, this is clearly not a proper case for its invocation. A motion to set aside a judgment under Rule 60(b) is addressed to the sound discretion of the district court. Here, every issue raised by the petitioners in their motion was or could reasonably have been raised on their motion for new trial and on their first appeal. Despite the lack of any substantial new question, the trial judge carefully considered petitioners' contentions and rejected them. Petitioners have completely failed to show that these rulings constituted that abuse of discretion necessary to overturn the decision of the district court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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